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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/311,092	05/13/1999	MICHAEL A. HELGESON	1004.123101	9772

128 7590 07/14/2003

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EXAMINER
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ART UNIT	PAPER NUMBER
2635	17

DATE MAILED: 07/14/2003

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 17

Application Number: 09/311,092
Filing Date: May 13, 1999
Appellant(s): HELGESON, MICHAEL A.

John G. Shudy, Jr.

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 21, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-34 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

6,198,394	Jacobsen et al.	3-2001
5,973,613	Reis et al.	10-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C.

122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-2, 10-12 and 13-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Jacobsen et al. (US # 6,198,394.)

Referring to claim 1, Jacobsen et al. disclose a system for remote monitoring of personnel as claimed in 1. See Figure 7 and respective portions of the system specification.

Jacobsen et al. show a building monitoring system (column 16 lines 46 to 60) utilizing bi-directional radio frequency communication (see Figure 7) comprising:

At least one master unit (400) including a radio frequency transmitter and receiver (406) (see Figure 6A); and

(see Figure 6A); and

A plurality of remote units (50) having a radio frequency transmitter and receiver (60 in Figure 4A), said remote units capable of transmitting to and receiving from said master unit of the building monitoring system (i.e. facility) (see Figure 7).

Referring to claim 2, Jacobsen et al. disclose a building monitoring system as set forth in claim 1, wherein at lest some of said remote units (50) include sensors (302) logically coupled to said remote units (50) (see Figure 4A).

Referring to claim 10, Jacobsen et al. disclose a building monitoring system as set forth in claim 2, wherein said remote units (50) have an armed state (column 12 lines 13 to 15) in which said sensors are active (column 9 line 8) and able to measure sensor variables (178 and 162 in Figure 2), and a disarmed state (column 12 lines 13 to 15) in which said remote units (50) are unable to transmit messages, wherein said remote units (50) have means for switching

between said armed and disarmed states (column 12 lines 13 to 15), and wherein said means for switching between the armed and disarmed states is responsive to a message received from said master unit (400).

Referring to claim 11, Jacobsen et al. disclose a building monitoring system as recited in claim 10. Jacobsen et al. did not clearly disclose wherein said remote units are unable to measure at least some sensor variables while in said disarmed state, however, Jacobsen et al. disclose that the sensors may be power on for 2 seconds of every minute (column 9 lines 12 to 14). Therefore, remote units are unable to measure at least some sensor variables while in said disarmed state is inherent when the sensors power off.

Referring to claim 12, Jacobsen et al. disclose a building monitoring system as recited in claim 10, wherein said remote units includes a controller (310 in Figure 4A) logically coupled to said receiver (60), wherein said means for switching between said armed and disarmed states passes (column 12 lines 13 to 15) said message from said receiver (60) to said controller (310); processes said message in said controller (column 3 lines 51 to 56); executes arm instructions in response to an arm message (column 9 lines 8 to 10); executes disarm instructions in response to a disarm message (column 15 lines 5-10), wherein said disarm instructions prevent said sensor change messages from being transmitted (column 15 lines 10 to 14).

Referring to claim 13, Jacobsen et al. disclose a building monitoring system as set forth in claim 2, wherein said remote units (50) have a reading sensor state (170, 26, 30 in Figure 2) in which said sensors (178 and162) are read by said coupled remote units (50), wherein said

reading sensor state (170) is entered in response to a read message received from said master unit (400); and

Said system (see Figure 7) including means for validating a sensor event (174), said means for validating including means for requesting reading (column 8 lines 56 to 64) of said sensor (162) initiated by said master unit (400) and means for reading said sensor (162) by said remote unit (50) responsive to said means for requesting, wherein said means for validating includes means for transmitting sensor data from said remote unit (50) to said master unit (400) (column 14 lines 39 to 44.)

Referring to claim 14, Jacobsen et al. disclose a building monitoring system as set forth in claim 13, wherein said sensors (162 and 178) have a type (26 or 30 or 170) and, said means for validating sensor data includes at least two different validation processes (158 or 174), wherein means for validating include means for identifying a sensor type (26 or 30 or 170) and means responsive to said type (26 or 30 or 170) for determining which of said validation processes to use (158 or 174.)

Referring to claim 15, Jacobsen et al. disclose a building monitoring system as set forth in claim 14, wherein said validation processes (128) waits a predetermined time before requesting an additional sensor reading and said predetermined time to wait is a function of said remote sensor type (168) (column 9 lines 10 to 14.)

Referring to claim 16, Jacobsen et al. disclose a building monitoring system as set forth in claim 14, wherein said means for validating includes an indication of whether to request an additional sensor reading and said indication of whether to request said additional reading is a function of said remote sensor type (column 9 lines 14 to 19.)

Referring to claim 17, Jacobsen et al. show a building monitoring system utilizing bi-directional radio frequency communication (see Figure 7) comprising:

At least one master unit (400) including a radio frequency transmitter and receiver (406) (see Figure 6A); and

A plurality of remote units (50 or 320) having a radio frequency transmitter and receiver (60 in Figure 4A), said remote units (50) capable of transmitting to and receiving from said master unit (see Figure 7) and capable of generating polling events in response to a poll message (column 8 lines 28 to 37) received from said master unit (400);

Said remote units (50) each having at least one timer for generating a timeout event (column 9 line 13);

Said remote units (50) each having at least one sensor (178) for measuring selected variables (170);

Said remote units (50) capable of generating a sensor event (30) in response to a sensor change of measurements (158); and

Said remote units (50) each having a non-communicating state with low power consumption (column 9 lines 13 to 15) and in which said remote units can neither receive nor transmit, and a receiving state having higher power consumption (column 9 lines 8 to12) than said non-communicating state and in which said units can received, wherein said selected remote units (50) are in said receiving state only after selected event occurrences (168), wherein said selected events (174) are selected from the group consisting of timeout events, polling events, and sensor events (column 13 lines 33 to 38.)

Referring to claims 18 and 19, Jacobsen et al. disclose a building monitoring system as set forth in claim 17, wherein said remote units (50) each have a transmitting state in which said remote unit can transmit (column 3 lines 40 to 45) and in which power consumption is higher than in said non-communicating state (column 12 lines 13 to 15), wherein said polling event and sensor event (100) (column 8 lines 28 to 37) causes said remote unit (50) to enter said transmitting state followed by entering said receiving state (column 3 lines 51 to 56).

Referring to claim 20, Jacobsen et al. disclose a building monitoring system as set forth in claim 19, wherein said sensor event (170, 26, 30 or 100) is caused by a change in a measured variable (column 2 lines 50 to 55).

Claims 1, 3-9, 23-29, 31-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Reis et al. (US# 5,973,613.)

Referring to claim 1; Reis et al. disclose a personal messaging system and method as claimed in 1. See Figure 3 and respective portions of the system specification.

Reis et al. show a building monitoring system (9) (column 11 lines 4 to 10) utilizing bi-directional radio frequency communication (see Figure 3 and column 11 lines 4 to 10) comprising:

At least one master unit (7) including a radio frequency transmitter (103) and receiver (101) (see Figure 4); and

A plurality of remote units (8) having a radio frequency transmitter (3) and receiver (1), said remote units (8) capable of transmitting to and receiving from said master unit (see Figure 3).

Referring to claim 3, Reis et al. show a building monitoring system (9) according to claim 1, wherein said remote units having a first low power consumption state in which said remote units can neither receive or transmit (column 35 lines 13 to 15), a second power consumption state in which said units can receive (column 13 lines 42 to 44 and column 14 lines 1 to 9), and third power consumption state in which said units can transmit (column 14 lines 18 to 21), wherein said second and third state have higher power consumption than said first state (column 38 lines 20 to 27).

Referring to claim 4, Reis et al. disclose a building monitoring system according to claim 3, wherein said remote units (8) are in said receive state only at predetermined intervals (column 32 lines 46 to 49).

Referring to claim 5, Reis et al. disclose a building monitoring system according to claim 4, Reis et al. disclose wherein said remote units (8) are in said receive state only after being in said transmit state (column 32 lines 51 to 56.)

Referring to claim 6, Reis et al. disclose a building monitoring system according to claim 5, Reis et al. disclose wherein said remote units (8) are in said receive state and wait an acknowledgment from said master unit only after being in said transmit state (column 9 lines 50 to 54.)

Referring to claim 7, Reis et al. disclose a building monitoring system according to claim 4, wherein said remote units (8) transmit messages at periodic intervals (column 33 lines 44 to 48).

Referring to claim 8, Reis et al. disclose a building monitoring system according to claim 4, wherein said remote units (8) transmit messages after a predetermined event for a discrete

period of time (column 33 lines 48 to 52) and then await an acknowledgment of said message transmission (column 9 lines 50 to 54).

Referring to claim 9, Reis et al. disclose a building monitoring system according to claim 8, wherein said remote units (8) receive said acknowledgment (column 5 lines 51 to 56), said remote units do not further transmit said transmitted message (column 5 lines 56 to 60).

Referring to claim 23, Reis et al. disclose a personal messaging system and method as claim 23. See Figure 3 and respective portions of the system specification.

Reis et al. show a method communicating between a remote unit (8) and a master unit (7) in a radio-frequency building monitoring system (9) (see Figure 3) comprising:

Transmitting a message (column 10 lines 54 to 55) from the remote unit (8) to the master unit (7); and transmitting an acknowledge (column 9 lines 50 to 57) from the master unit (7) to the remote unit (8) indicating receipt of the message (see Figure 2.)

Referring to claim 24, Reis et al. disclose a method according to claim 23, further comprising the steps of:

Transmitting a message (column 10 lines 55 to 57) from the master unit to the remote unit; and transmitting an acknowledge (column 9 lines 21 to 26) from the remote unit (102) to the master unit (216) indicating receipt of the message (see Figure 2.)

Referring to claim 25, Reis et al. disclose a method for communicating between a remote unit (8) and a master unit (7) in a radio-frequency building monitoring system (see Figure 3),

wherein the remote unit (8) is capable of transmitting to and receiving messages from the master unit (7) (column 10 lines 51 to 57,) the remote unit (8) further having a non-communicating low power consumption state (column 32 lines 34 to 36) in which said remote unit can neither receive nor transmit, a receiving state in which said remote unit (8) can receive, and a transmitting state in which said remote unit (8) can transmit receive, said remote unit also having at least one sensor producing a sensor change event (column 42 lines 16 to 26), the method comprising:

waiting for sensor change event while in said non-communicating state (column 32 lines 45 to 50);

entering the transmitting state and transmitting a message upon detecting the sensor change event (column 4 lines 42 to 46);

Entering the receiving state and waiting for acknowledgement of said data transmission (column 9 lines 25 to 27); and

returning to the waiting for sensor change step (column 32 lines 51 to 58).

Referring to claim 26, Reis et al. disclose a method as recited in claim 25, wherein said remote unit (102 in Figure 2) does not transmit while in said receiving state and does not receive while in said transmitting state (column 9 lines 26 to 30.)

Referring to claim 27, Reis et al. disclose a method as recited in claim 25, wherein said remote unit (102) receives scheduling information from said master unit (216) while in at least some of said receiving states (column 10 lines 16 to 23.)

Referring to claim 28, Reis et al. disclose a method as recited in claim 25, wherein said remote unit (102) receives transmission frequency instructions from said master (202) while in at least some of said receiving states (column 10 lines 26 to 31).

Referring to claim 29, Reis et al. disclose a method as recited in claim 25, wherein said system includes a validating step, when said validating step includes: receiving a request for a sensor re-read from said master unit, wherein said sensor re-read request is responded to by said remote unit by reading said sensor and transmitting a message to said master unit (column 35 lines 15 to 23).

Referring to claim 31, Reis et al. disclose a method for communicating between a remote unit (8) and a master unit (7) in a radio-frequency building monitoring system (see Figure 3), wherein the remote unit (8) is capable of transmitting to and receiving messages from the master unit (7) (column 10 lines 51 to 57) the remote unit (8) further having a non-communicating low power consumption state (column 32 lines 34 to 36) in which said remote unit can neither receive nor transmit, a receiving state in which said remote unit (8) can receive, and a transmitting state in which said remote unit (8) can transmit receive, the method comprising:

Determining a time (column 5 lines 32 to 36) for communicating with said master (7);

Waiting for said time while in said non-communicating state (column 32 lines 45 to 50);

Changing to said transmitting state and transmitting a message upon attaining said determined time for communication (column 42 lines 45 to 50);

Waiting for acknowledgement of said transmission in said receiving state (column 9 lines 25 to 27); and

Returning to said determining step for determining a new time for communicating with said master (column 6 lines 42 to 48).

Referring to claim 32, Reis et al. disclose a method according to claim 31, wherein the remote unit has at least one sensor for producing sensor output data, at least some of the messages transmitted upon attaining said time for communication including said sensor output data (column 42 lines 16 to 26).

Referring to claim 34, Reis et al. disclose a method according to claim 32, wherein waiting for acknowledgment of said transmission in said receiving state; and waiting while in said non-communicating state (column 39 lines 1 to 12).

Referring to claim 33, Reis et al. disclose a method for communicating between a remote unit (8) and a master unit (7) in a radio-frequency building monitoring system (see Figure 3), wherein the remote unit (8) is capable of transmitting to and receiving messages from the master unit (7) (column 10 lines 51 to 57) the remote unit (8) further having a non-communicating low power consumption state (column 32 lines 34 to 36) in which said remote unit can neither receive nor transmit, a receiving state in which said remote unit (8) can receive, and a transmitting state in which said remote unit (8) can transmit receive, the method comprising:

Providing a time signal (column 13 lines 22 to 25) from said master (7) to said remote (8);

Waiting while in said non-communicating state for a time interval corresponding to said provided time signal (column 9 lines 25 to 27); and

Changing to said transmitting state and transmitting a message after expiration of said time interval (column 42 lines 45 to 50).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobsen et al. (US# 6,198,394.)

Referring to claims 21-22, Jacobsen et al. disclose a building monitoring system as set forth in claim 20. Jacobsen et al. did not clearly disclose wherein said sensor variable is binary or continuous variable. However, Jacobsen et al. teach that sensors variable is a physiological variable (column 2 lines 50 to 55) and an environmental variable (column 9 lines 37 to 40.)

At the time the invention, it would have been obvious to a person of ordinary skill in the art to associate a physiological variable such as heart rate, motion status and standing or in a prone position as a binary variable and an environmental variable such as breathing rate, oxygen saturation and ambient temperature as a continuous variable (column 6 lines 21 to 37) as evidenced by Jacobsen et al. because Jacobsen et al. teach that having different variables in order to analyze the data in distinctive ways.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reis et al. in further view of Jacobsen et al. (US# 6,198,394.)

Referring to claim 30, Reis et al. disclose a method as recited in claim 25, however, Reis et al. does not clearly disclose further including:

changing to a disarmed state upon reception of a disarm message from said master unit, wherein, while in said disarmed state, said remote unit does not, in combination, both sense sensor data from the sensor and transmit sensor data; and

changing to an armed state upon reception of an arm message from said master unit, wherein, while in said armed state, said remote unit does, in combination, sense sensor data from the sensor and transmit sensor data.

In the same field of endeavor of remote control system, Jacobsen et al. teach a method further including:

changing to a disarmed state (column 12 lines 13 to 15) upon reception of a disarm message from said master unit (400), wherein, while in said disarmed state, said remote unit (50) does not, in combination, both sense sensor data from the sensor (178) and transmit sensor data; and

changing to an armed state (column 12 lines 13 to 15) upon reception of an arm message from said master unit (400), wherein, while in said armed state, said remote unit (50) does, in combination, sense sensor data from the sensor and transmit sensor data because it would extend the battery life of the remote units and the master unit has full control of the remote units.

One skill in the art to recognize the need for a method of changing to arm or disarmed state from the master unit and while in said arm or disarmed state, said remote unit does not, in

combination, both sense sensor data from the sensor and transmit sensor data in the personal messaging method of Jacobsen et al. into the personal messaging method of Reis et al. because Reis et al. suggests that the need of turning the remote unit power on or power off from the master unit is so desired and Jacobsen et al. teach that changing to armed or disarmed message from said master unit. Therefore, at the time the invention, it would have been obvious to a person of ordinary skill in the art to add Reis et al.'s personal messaging method into the system for remote monitoring of personnel of Jacobsen et al. with the motivation that the remote unit would use little consumption of power and the system is secured by having the master unit has full control of the remote units.

(11) Response to Argument

A. With respect to claims 1-2 and 10-20, the appellant argues that Jacobsen et al. do not constitute applicable art.

In response to appellant's arguments, the recitation "a building monitoring system" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In the instant application, no references to a building or a building monitor have been addressed in the body of the claims.

Assuming phrase a building monitoring system is given patentable weight, it is examiner's position that a building monitoring system is read as monitoring building statistics or monitoring building alarms, or a system for monitoring in a building. Jacobsen et al. teach an individual status unit to be made smaller and provided to residents of long-term care facilities (column 16 lines 46 to 60). When considering the Jacobsen et al. reference, one skilled in the art readily recognizes resident of long term care facilities implies places such as nursing homes. Clearly these are buildings. Therefore, when considering the broadest reasonable interpretation of the claims, Jacobsen et al. anticipate a building monitoring system.

As defined in the claims, "a building monitoring system" can include systems that monitor building 'statistics' or a monitoring system in a building or a system for monitoring in a building. The term is not so limiting since it can also include personal monitoring systems within a building. For the claims to be read as narrowly as the appellant argues would be permitting the unfair importation of limitations into the claims. Jacobsen et al. disclose the unit 50 contained within the harness 56 is responsive to the integrated sensor unit 14 and sensor/display unit 18 in that it receives sensor data and communicates the data to a remote monitoring unit, such as the leader/medic unit and/or the command unit (column 6 lines 52 to 56). The unit 50 includes an antenna 60 for sending and receiving data from remote locations. Typically, the information will be sent at defined intervals so that a remote monitoring unit, such as a leader/medic unit or a command unit, (both discussed below), can keep track of the physiological status and geolocation of each soldier. Each of these systems, however, also typically includes a communications mechanism for causing the unit 50 to provide the information on demand. Thus, for example, if the sensor in the integrated sensor unit 14 indicate

a threat of hypothermia, the leader/medic unit or the command unit may instruct the unit 50 to provide more frequent information about the physiological status of the soldier until the situation is rectified (column 6 line 66 to column 7 line 12). Clearly, Jacobsen et al. disclose monitoring system.

The determination of what arts are analogous to a particular claimed invention is at times difficult. It depends upon the necessary essential function or utility of the subject matter covered by the claims, and not upon what it is called by appellant. The reference is analogous art because the reference deals with remote monitoring system.

"Arguments that the alleged anticipatory prior art is nonanalogous art' or teaches away from the invention' or is not recognized as solving the problem solved by the claimed invention, [are] not germane' to a rejection under section 102." Twin Disc, Inc. v. United States, 231 USPQ 417, 424 (Cl. Ct. 1986) (quoting In re Self, 671 F.2d 1344, 213 USPQ 1, 7 (CCPA 1982)).

A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it. The question whether a reference "teaches away" from the invention is inapplicable to an anticipation analysis. Celeritas Technologies Ltd. v. Rockwell International Corp., 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998) (The prior art was held to anticipate the claims even though it taught away from the claimed invention. "The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed."). See also Atlas Powder Co. v. IRECO, Inc., 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed. Cir. 1999) (Claimed composition was anticipated by prior art reference that inherently met claim

limitation of "sufficient aeration" even though reference taught away from air entrapment or purposeful aeration.).

B. With respect to claims 1, 3-9, 23-29 and 31-34, the appellant argues that Reis et al. do not constitute applicable art.

In response to appellant's arguments, the recitation "a building monitoring system" and "a method for communicating between a remote unit and a master unit in a radio-frequency building monitoring system" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In the instant application, no references to a building or a building monitor have been addressed in the body of the claims.

Referring to claims 1 and 3-9, assuming phrase a building monitoring system is given patentable weight, it is examiner's position that a building monitoring system is read as monitoring building statistics or monitoring building alarms, or a system for monitoring in a building. Merely a building monitoring system is a monitoring system in a building. Reis et al. teach a pager device is used as an identification pager for personnel within an industrial facility. The identification signal triggers a central system to write the event into an access log and unlock access controls such as doors, gates, and the like (column 4 lines 40 to 46). When considering

the Reis et al. reference, one skilled in the art readily recognizes using the remote messaging system to monitor the building. Clearly this is a building monitoring system. Therefore, when considering the broadest reasonable interpretation of the claims, Reis et al. anticipates a building monitoring system.

Reis et al. also teach that a very high frequency radio frequency is used in an air communication medium so that the transmitter power, antenna size requirements and device range capability are satisfactory for local communication ranges suitable for warehouses, buildings, vehicles and other similar local regions (column 11 lines 4 to 10). When considering the Reis et al. reference, one skilled in the art readily recognizes using the remote messaging system in warehouses and buildings implies buildings. Clearly these are buildings. Therefore, when considering the broadest reasonable interpretation of the claims, Reis et al. anticipates a building monitoring system.

Referring to claims 23-29 and 31-34, a method for communicating between a remote unit and a master unit in a radio-frequency building monitoring system is a method for communicating between two units. Merely a method of a remote unit communicates with a master unit in a building. Reis et al. teach that a pager device is used as an identification pager for personnel within an industrial facility. The pager receives a signal indicative of entry into a restricted zone and automatically transmits an identification response signal. The identification signal triggers a central system to write the event into an access log and unlock access controls such as doors, gates, and the like (column 4 lines 40 to 46). A very high frequency radio frequency is used in an air communication medium so that the transmitter power, antenna size requirements and device range capability are satisfactory for local communication ranges

suitable for warehouses, buildings, vehicles and other similar local regions (column 11 lines 4 to 10). When considering the Reis et al. reference, one skilled in the art readily recognizes using the remote messaging system in warehouses and buildings implies the pagers or tags communicate with the interrogator in buildings. Clearly there is a method for communicating between a remote unit and a master unit in a radio-frequency buildings monitoring system. Therefore, when considering the broadest reasonable interpretation of the claims, Reis et al. anticipates a method for communicating between a remote unit and a master unit in a radio-frequency building monitoring system.

As defined in the claims, "a building monitoring system" can include systems that monitor building 'statistics' or a monitoring system in a building or a system for monitoring in a building. The term is not so limiting since it can also include personal monitoring systems within a building. For the claims to be read as narrowly as the appellant argues would be permitting the unfair importation of limitations into the claims. Reis et al. disclose by way of example, referring to FIG. 5, one of the I/O units 18 may be a temperature monitoring device which provides temperatures to the pager 8 to be recorded by the pager for transmission to the interrogator 7 of FIG. 3. In such a case, the nature and format of the data is specified in the format field with any data to be transferred to the interrogator carried in the DAp field. Similarly, if the I/O unit 18 is an RS232 port, such a port and the data format is specified in the format field and the data to be transferred to the interrogator carried in the DAp field. Clearly, Jacobsen et al. disclose a remote monitoring system.

The determination of what arts are analogous to a particular claimed invention is at times difficult. It depends upon the necessary essential function or utility of the subject matter covered

by the claims, and not upon what it is called by appellant. The reference is analogous art because the reference deals with remote monitoring system.

"Arguments that the alleged anticipatory prior art is nonanalogous art' or teaches away from the invention' or is not recognized as solving the problem solved by the claimed invention, [are] not germane' to a rejection under section 102." Twin Disc, Inc. v. United States, 231 USPQ 417, 424 (Cl. Ct. 1986) (quoting In re Self, 671 F.2d 1344, 213 USPQ 1, 7 (CCPA 1982)).

A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it. The question whether a reference "teaches away" from the invention is inapplicable to an anticipation analysis. Celeritas Technologies Ltd. v. Rockwell International Corp., 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998) (The prior art was held to anticipate the claims even though it taught away from the claimed invention. "The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed."). See also Atlas Powder Co. v. IRECO, Inc., 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed. Cir. 1999) (Claimed composition was anticipated by prior art reference that inherently met claim limitation of "sufficient aeration" even though reference taught away from air entrapment or purposeful aeration.).

C. With respect to claims 21-22, the appellant argues that Jacobsen et al. is not analogous art.

In response to appellant's arguments, as explained shown above in Paragraph A of the Examiner Answer, Jacobsen et al. show a building monitor system. Merely a building monitoring system is a monitoring system in a building or a system for monitoring in a building or a monitor building 'statistics'. Jacobsen et al. teach an individual status unit could be made smaller and provided to residents of long-term car facilities (column 16 lines 46 to 60). When considering the Jacobsen et al. reference, one skilled in the art readily recognizes resident of long term care facilities implies places such as nursing homes. Clearly these are buildings. Therefore, when considering the broadest reasonable interpretation of the claims, Jacobsen et al. anticipate a building monitoring system.

Jacobsen et al. teach that sensors (22, 24,26, 30, 222, 220, 296 in Figure 4A) for monitoring personnel which measures selected physiological variables and geolocation of a person during physical exercise/motion, stores and interprets this information and communicates with higher echelons of command and medical care (column 2 lines 49 to 54). The wrist sensor /display unit 18 is held in place with a band 216. If desired, sensor 220 and 222 can be disposed in the band 216 and integrated with the integrated sensor unit 14 FIGS. 1 and 2). Typically, sensor 220 will be a noninvasive blood pressure monitoring system, and sensor 222 will be a sensor for determining oxygen saturation. Other sensors may also be provided for determining environmental variables (column 9 lines 34 to 41).

When considering the Jacobsen et al. reference, one skilled in the art readily recognizes the physiological or environmental variables of the sensor is binary variable or continuous variable. Clearly these are variables. Therefore, when considering the broadest reasonable interpretation of the claims, Jacobsen et al. anticipate variables.

The determination of what arts are analogous to a particular claimed invention is at times difficult. It depends upon the necessary essential function or utility of the subject matter covered by the claims, and not upon what it is called by the appellant. The reference is analogous art because the reference deals with variables of the sensor.

At the time the invention, it would have been obvious to a person of ordinary skill in the art to associate a physiological variable such as heart rate, motion status and standing or in a prone position as a binary variable and an environmental variable such as breathing rate, oxygen saturation and ambient temperature as a continuous variable (column 6 lines 21 to 37) as evidenced by Jacobsen et al. because Jacobsen et al. teach that having different type of variables in order to analyze the data measurement in distinctive ways.

D. With respect to claim 30, the appellant argues that there appears not to be a suggestion or motivation in Reis at al. or Jacobsen et al. to combine.

In response to appellant's arguments, as explained shown above in Paragraph B and Paragraph A of the Examiner Answer, Reis et al. and Jacobsen et al. show a method for communicating between a remote unit and a master unit in a radio-frequency building monitoring system. The Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures

taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971).

Reis et al. disclose a system for remote pager is used as an identification pager for personnel within an industrial facility. The pager receives a signal indicative of entry into a restricted zone and automatically transmits an identification response signal. The identification signal triggers a central system to write the event into an access log and unlock access controls such as doors, gates, and the like (column 4 lines 40 to 46; see Figures 3-5). Jacobsen et al. teach that an individual status unit could be made smaller and provided to residents of long-term care facilities (column 16 lines 46 to 60).

One skilled in the art understands that Reis et al. and Jacobsen et al. are analogous art because the references deal with remote monitoring system in building facilities. Reis et al. teach a two-way paging system using portable units that receive signals and initiate or transmit reply messages using a cellular communications network. Reis et al. also teach that the remote system is used in a communication region where large number of remote units are present in the communication region, where the locations or identities of the remote unit in the communication region are not necessarily know, where transport of the remote units to and from the communication region is not necessarily restricted and where contentions among communications to and from remote units need to be resolved in a time and energy efficient manner (column 1 lines 35 to 45). Jacobsen et al. teach a remote monitoring system for monitoring personnel which measures selected physicological variables and geolocation of a person during physical motion, stores and interprets this information, and communicates with higher echelons of command. The command units include a conventional network interface for

communicating and controlling other command units and remote units. Therefore, that there appears to be a suggestion or motivation in Reis at al. to combine with Jacobsen et al. because both Reis et al. and Jacobsen et al. teach the master unit monitors and controls the remote units.

Furthermore, Jacobsen et al. teach a method further including:

changing to a disarmed state (column 12 lines 13 to 15) upon reception of a disarm message from said master unit (400), wherein, while in said disarmed state, said remote unit (50) does not, in combination, both sense sensor data from the sensor (178) and transmit sensor data; and

changing to an armed state (column 12 lines 13 to 15) upon reception of an arm message from said master unit (400), wherein, while in said armed state, said remote unit (50) does, in combination, sense sensor data from the sensor and transmit sensor data because it would extend the battery life of the remote units and the master unit has full control of the remote units.

One skill in the art to recognize the need for a method of changing to arm or disarmed state from the master unit and while in said arm or disarmed state, said remote unit does not, in combination, both sense sensor data from the sensor and transmit sensor data in the personal messaging method of Jacobsen et al. into the personal messaging method of Reis et al. because Reis et al. suggests that the need of turning the remote unit power on or power off from the master unit is so desired and Jacobsen et al. teach that changing to armed or disarmed message from said master unit. Therefore, at the time the invention, it would have been obvious to a person of ordinary skill in the art to add Reis et al.'s personal messaging method into the system for remote monitoring of personnel of Jacobsen et al. with the motivation that the remote unit

would use little consumption of power and the system is secured by having the master unit has full control of the remote units.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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July 11, 2003

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Conferees
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